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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

WATERWATCH OF OREGON, et al.,

Case No. 3:20-cv-00413-HZ

Plaintiffs,

v.

**U.S. ARMY CORPS OF ENGINEERS, et
al.,**

Defendants.

**NOTICE OF RECENT ACTIONS
RELATED TO PLAINTIFFS'
PRELIMINARY INJUNCTION
MOTION (ECF 7).**

Federal Defendants respectfully provide notice of relevant facts and recent events that emerged after Federal Defendants filed their opposition brief, which Plaintiffs did not address in their reply brief (ECF 36).

Plaintiffs' reply expands on their previous arguments that Congress assuredly will adopt the Corps' report and recommendation and do so without modifying it, as Congress simply rubberstamps the Corps' proposals for water resource and development projects. ECF 36 at 7-

10. Plaintiffs argue that facts relating to the Corps' report and recommendation are most relevant. ECF 36 at 7-8. But Congress has taken recent actions related to the Corps' report and recommendation that Plaintiffs neglected to mention in their reply papers.

On April 21, 2020, the U.S. Senate Committee on Environment and Public Works released for public review draft legislation addressing the Corps' proposed reallocation of conservation storage. *See* Proposed America's Water Infrastructure Act of 2020 (AWIA 2020), §§ 1050, 1202(54);¹ Press Release, EPW Committee Leaders Release Drafts of Water Infrastructure Legislation (Apr. 21, 2020).² The draft legislation does not adopt the Corps' report and recommendation, however it would provide authority and authorize appropriations of \$2 million to the Corps to work with the State of Oregon to protect instream flows for fish and wildlife benefits when implementing any reallocation in the Willamette Basin, in accordance with NMFS's 2019 biological opinion. *See* AWIA 2020 § 1050(a). The proposed legislation lines up with a core reason the Corps proposed to reallocate conservation storage—to protect salmonids by providing a mechanism to protect instream flows. ECF 23 at 34.

The proposed legislation is relevant to Plaintiffs' labored arguments that Congress will simply rubberstamp the Corps' report and recommendation. While Congress ultimately may not adopt the draft legislation, the draft legislation shows that Congress is exercising its own independent judgment in reviewing the Corps' recommendation. Congress is actively reviewing the Corps' report and recommendation and developing its own legislative proposals, such that future legislation (if any) would be attributable to Congress and not the Corps. *See, e.g.*, AWIA

¹ Available at https://www.epw.senate.gov/public/index.cfm?a=files.serve&File_id=F324EF43-E2F3-40C1-AB62-6902E362263C (last visited May 5, 2020).

² Available at <https://www.epw.senate.gov/public/index.cfm/2020/4/epw-committee-leaders-release-drafts-of-water-infrastructure-legislation> (last visited May 5, 2020).

2020 §§ 1050, 1202; *see also* ECF 24 at 72-73 (Coleman, Attach. 8) (congressional inquiries on the Corps' proposal).

Because the draft legislation constitutes a relevant fact and recent event that Plaintiffs did not to address in their reply brief, Federal Defendants provide notice of the proposed legislation for the Court's consideration in resolving Plaintiffs' motion for preliminary injunctive relief.

DATED: May 5, 2020

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CERTIFICATE OF SERVICE

I certify that the foregoing was electronically filed through the Court's electronic filing system, which will generate automatic service upon on all Parties enrolled to receive that notice.

/s/ Michael R. Eitel
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